

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE RONALD M. SOHIGIAN**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Judge Ronald M. Sohigian, a judge of the Los Angeles County Superior Court since 1988. His current term began in 2003. Judge Sohigian and his attorney, Edward P. George, Jr., appeared before the commission on March 29, 2007 to contest the imposition of a public admonishment, pursuant to Rule 116 of the Rules of the Commission on Judicial Performance. Having considered the written and oral objections and argument submitted by Judge Sohigian and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based on the following statement of facts and reasons.

STATEMENT OF FACTS AND REASONS

Based on the facts set forth below, the commission finds that Judge Sohigian has engaged in a practice of abusing his judicial authority in connection with the issuance of orders to show cause (OSC's) re sanctions, in violation of canons 1, 2A, and 3B(2) of the California Code of Judicial Ethics. The commission also finds that Judge Sohigian treated an attorney in a sarcastic and belittling manner in violation of canon 3B(4), which requires a judge to be patient, dignified, and courteous to lawyers with whom the judge deals in an official capacity.

I. IMPROPER ISSUANCE OF ORDERS TO SHOW CAUSE

A. Issuance of OSC's to plaintiffs for failure to appear at the initial status conference in cases where plaintiff's counsel did appear at the conference.

Judge Sohigian routinely issued OSC's to plaintiffs for failing to appear at the initial status conference in civil cases, even when the plaintiffs had appeared through counsel and there was no requirement that plaintiffs appear personally at the status conference. Judge Sohigian contends that these OSC's were not intended to have "a counterfactual meaning"; that is, he did not intend to mean that someone who was in attendance was alleged not to be in attendance. Instead, when there was an absence at a status conference or a failure to give notice of the status conference, he issued OSC's to require *all* parties to prove their lack of responsibility for the absence or failure to give notice. Issuance of an OSC and threatening sanctions against parties in the absence of *any* evidence of malfeasance on their part is an abuse of the sanctions power. Judge Sohigian attempts to minimize the burden and detriment to the parties by asserting that the hearings on the OSC's were scheduled on days when the parties were already scheduled to appear in court for other reasons. However, as a result of his practice, the parties were still required to expend resources to respond to OSC's that were unwarranted. Judge Sohigian's practice is exemplified by the following cases: *E.H. Butland Development Corp. v. Century Veterinary Group, et al.* (case No. BC284988) (*Butland*); *Christine Avila v. David Cervantes, et al.* (case No. BC289872) (*Avila*); *Kamel Hur v. Kwi Jong Yang, et al.* (case No. BC290771) (*Hur*); *Izumi Yokozawa v. Alliant Food Service Corp., et al.* (case No. BC290886) (*Yokozawa*); and *Shahriar Yazdani, et al. v. Janis Burns, et al.* (case No. BC305537) (*Yadzani*).

B. Issuance of OSC's to defendants for failing to give notice of the initial status conference when they had no duty to do so.

Judge Sohigian's practice of issuing unwarranted OSC's included issuing OSC's to defendants for failing to give notice of the initial status conference, even though only the plaintiffs were required to give notice and not the defendants. The issuance of OSC's under these circumstances was an obvious abuse of authority, as there was absolutely no factual or legal basis to sanction defendants for failing to do something they were not required to do. Judge Sohigian's practice required defendants to expend resources unnecessarily to respond to the unwarranted OSC's and is exemplified by the following cases: *Butland*; *Avila*; and *Hur*.

C. Leaving OSC's in place during the pendency of the action.

Judge Sohigian also engaged in a practice of repeatedly continuing hearings on certain OSC's, thereby postponing any decision on them, even though he had received a response from the party or parties threatened with sanctions that would have allowed him to decide whether to impose sanctions. The judge's practice of failing to resolve OSC's subjected the parties to the threat of sanctions for indeterminate periods and left them in an uncertain position. Judge Sohigian explained this practice by stating that it was proper for him to wait until further developments had occurred in the case to see whether he wanted to issue sanctions. While judges are permitted to consider a *previous* lack of compliance or *previous* sanctions in deciding whether to impose sanctions, fundamental principles of notice and due process preclude judges from imposing sanctions for future conduct upon which the issuance of the initial OSC was not based. Judge Sohigian's practice was a clear abuse of judicial authority.

Judge Sohigian's practice is illustrated by events in *Yokozawa*. At the initial status conference in *Yokozawa* on May 5, 2003, Judge Sohigian issued OSC's to each party for failure to file a status conference questionnaire and failure to appear at the status conference, although no defendant had made a formal appearance in the case. Defense counsel submitted a declaration on May 23, 2003, in response to the

OSC, explaining that no responsive pleading was due from defendant as of the May 5, 2003, initial status conference. Despite that submission, Judge Sohigian continued the OSC's and kept them on calendar throughout the pendency of the case, until January 27, 2004, when the case and the OSC's were dismissed.

Additional examples of this practice occurred in *New York Credit v. Unitex International, et al.* (case No. BC286265); *Stacey Snowden v. Advanced Video and Security Technologies, et al.* (case No. BC292087); and *Yazdani*.

D. Issuance of OSC's threatening dismissal of the case at the initial status conference.

The OSC's Judge Sohigian routinely issued at initial status conferences (entitled "Order to Show Cause Re Dismissal/ Striking-And-Default And Why Plaintiff And Counsel Should Not Be Sanctioned For Failure to Give Notice of Hearing" and "OSC Re Dismissal/ Striking-and-Default And Why Parties and Counsel Should Not Be Sanctioned") threatened sanctions that would terminate a case or a party's defense at the outset of the case. Government Code section 68608(b) permits the dismissal of a case or striking of a pleading as a sanction only "if it appears that less severe sanctions would not be effective after taking into account the effect of previous sanctions or previous lack of compliance in the case." Calendar management by itself is not a sufficient basis for dismissal, and courts have no inherent power to dismiss solely for failures to comply with time standards for case disposition. (Weil and Brown, *California Practice Guide: Civil Procedure Before Trial* (Rutter 2006), §12:92-12:93, p. 12(1)-32.) Judge Sohigian issued one or both of his form OSC's at the initial status conference in each of the cases cited herein, even though there had been no previous sanctions or previous lack of compliance in any of the cases that he could have considered. That practice is a clear abuse of authority. Further, Judge Sohigian's issuance of OSC's threatening such severe sanctions at the outset of actions "suggests an abdication of his responsibility" to determine whether such sanctions were appropriate. (See *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 851.)

E. Judge Sohigian's Objections to Public Admonishment.

In response to the commission's notice of intended public admonishment and pursuant to the commission's rules, Judge Sohigian prepared and submitted his written objection to public, as opposed to private discipline. (Rules of the Com. on Jud. Performance, Rule 116.) Judge Sohigian also appeared before the commission pursuant to the rules. (*Id.*) In both his written objections and at his appearance before the commission, Judge Sohigian requested consideration of his written response to the commission's preliminary investigation letter to explain his use of OSC's. The commission has considered Judge Sohigian's objections and responses, and briefly discusses them here. (Rules of the Com. on Jud. Performance, Rule 116(b).)

In support of his objection to public discipline and request for private discipline, Judge Sohigian expressed regret for the manner in which he used OSC's in case management. He admitted that the OSC practices described above were wrong. He advised the commission that he has changed those practices, and no longer employs the OSC forms that he used in the example cases. The commission acknowledges Judge Sohigian's expressions of regret, his admissions, and that he has taken remedial action. The commission has weighed those factors in arriving at its determination of this matter. However, the commission has determined that for the following reasons, public admonishment remains appropriate.

At his appearance before the commission, Judge Sohigian stated that he believes that the Judicial Council should define or promulgate a statewide form for OSC's, and that he would like the commission to defer or suspend action in this matter to allow him to seek a ruling from the Judicial Council on what an OSC form should contain. In support of that position, Judge Sohigian stated that several California counties are using OSC forms that are similar or the same as the ones he employed and has now abandoned, and he brought examples with him to his appearance. He suggested that the continued use of these forms threatens the same kind of misconduct and harm that he admits was involved in his OSC practices.

Moreover, in response to questions by commission members about why he issued OSC's to persons who had committed no wrongdoing, he said he "admit[ted]" that the text of his OSC forms was "too loose."

These responses suggest that Judge Sohigian believes that his abuses of the judicial power to issue OSC's occurred wholly or in part because his OSC forms were defective, and that other judges using similar forms may unknowingly commit the same abuses. However, the abusive aspects of Judge Sohigian's OSC practices are not the result of defects in form.

As discussed above, it is misconduct to issue OSC's to parties or counsel who have committed no wrongdoing, but who nonetheless must respond to the OSC's under threat of dismissal, default, or other severe sanction. (See *Kloepfer v. Commission on Judicial Performance*, *supra*, 49 Cal.3d at p. 857 [OSC to non-party to "find out the address of the defendant" and why the non-party posted bail for the defendant was a "serious misuse of the judicial office" where there was no factual basis for the judge's conclusion that the non-party had committed misconduct that would subject the non-party to the court's jurisdiction to order him to appear].) For that reason, it was at least improper action when Judge Sohigian issued OSC's threatening sanctions against innocent counsel and parties, not because he had some reasonable basis to believe they had done something that might warrant the sanctions, but only because he wanted to compel them to provide information about some other person's wrongdoing. The misconduct in that practice was not the accidental byproduct of a poorly drafted form. The misconduct was Judge Sohigian's determination to issue OSC's for the improper purpose of compelling innocent parties and counsel to provide testimony under threat of sanctions, when those sanctions could not have been lawfully imposed on them for the misconduct cited in the OSC's.

Similar considerations apply to Judge Sohigian's practice of repeatedly continuing the hearings on OSC's issued at the first status conferences in civil cases. Judge Sohigian continued the hearings on those OSC's for the stated purpose

of holding potentially severe sanctions in abeyance throughout an action, so that he could consider the acts and omissions of the parties occurring after the OSC issued in setting any sanction he might impose for the wrongdoing the OSC charged. That purpose had nothing to do with the form of the OSC, and no modification to Judge Sohigian's OSC form or that of any other court would remedy the abuse of judicial power the practice embodied.

Judge Sohigian's focus on defects of form and his request for suspension of these proceedings so that he can seek a ruling from the Judicial Council on the propriety of OSC forms similar to his own indicates a fundamental misunderstanding of the reasons the commission has acted in this matter. Judge Sohigian has described the reasons for his OSC practices in his responses to the commission's notice and at his appearance before the commission. Those reasons establish that the practices were an abuse of judicial power and at least improper action, and were not the result of imprecise or faulty forms. The commission therefore rejects Judge Sohigian's objection to public admonishment and request for suspension of the proceedings.

II. IMPROPER TREATMENT OF ATTORNEY

In 2006, Judge Sohigian was presiding over *Wasserman, Comden, Casselman & Pearson v. Harris, et al.* (case No. BC340196), in which the plaintiff, a law firm, was seeking to recover attorney's fees from some of its former clients. Attorney Peter Q. Ezzell represented the plaintiff law firm. On February 9, 2006, Judge Sohigian set equitable causes of action (which could be decided by the judge and did not require a jury) for trial on April 17, 2006. On April 4, 2006, some of the defendants filed for bankruptcy, resulting in a stay (or suspension) of the proceedings before Judge Sohigian as to those defendants. When Mr. Ezzell appeared before Judge Sohigian on April 17, 2006, he expected to proceed with the trial on the equitable causes of action, despite the bankruptcy filings. Judge Sohigian treated him in a belittling, rude and sarcastic manner, as the transcript of the proceeding shows.

Judge Sohigian asked why trial should proceed against certain defendants given the state of the pleadings. Mr. Ezzell stated that he believed certain equitable issues were set for separate trial. The following exchange occurred:

THE COURT: That's not exactly the answer to the question I want. ... I think my question is pretty clear on the record. You recognize your answer doesn't respond to it. If that's what you want to say, that's all right. I can't make you answer any question I've ask [sic]. I can just ask it, and then you can say whatever you want to.

MR. EZZELL: I always seek to respond to the court.

THE COURT: I'm not sure that's true, but in this case that didn't occur.

When Judge Sohigian asked Mr. Ezzell when the first amended complaint was filed, he initially told the judge that he did not have a copy of that pleading with him, but later in the proceeding told the judge that he wanted to check a box he had brought to court to see if it contained the pleading, after which the following exchange occurred:

THE COURT: Wait a minute. Mr. Ezzell, you can do anything you want to do. I beg of you, sir, when I ask you a question and you give me an answer, make sure that you are telling the truth particularly about whether you have a piece of paper with you. When you tell me something and then by behavior you impeach yourself by starting to look in the briefcase put just about three and a half feet from you now – when you start to look for something that you tell me you do not have, it leaves me with a very uneasy feeling about matters having to do with credibility. I'll give you whatever period of time to look for your pleading you would like. Would you like me to sit here on the bench while you look for you [sic] or would you like me to go into recess? That's very courtly of you, but I think in view of these inconsistent statements by Mr. Ezzell, you better wait and find out whether he does or does not have his own pleading since he stated both he does have it and does not have it. I think you might want to either inforce [sic] his position or impeach his position with respect to one of those.

MR. EZZELL: Your Honor, I think I said I need to look for it.

THE COURT: You did say that just now but before you said you didn't have it so there would be no reason to look for it. For example, if someone were to ask me to look for a \$10,000 bill in my pocket, I wouldn't say, just a second. I'll look for it. I pretty much would know.

MR. EZZELL: I have a copy of it, Your Honor.

THE COURT: That must be very comforting with respect to what you said the second time around. Go ahead and look at it. Then make whatever argument you wish regarding this topic that I raised except for the topics of credibility and accuracy.

When Mr. Ezzell indicated to the court that he was not a bankruptcy lawyer and could not tell the court whether he could dismiss certain defendants under federal bankruptcy law, Judge Sohigian stated:

THE COURT: Mr. Ezzell, you've got to know the answer to that question. That was obvious. You knew that question was going to be asked. [¶] ... And so for anybody to show up in this courtroom again and say, I'm not a bankruptcy lawyer. I think. I don't know. It begins to sort of stretch the membrane.

After the foregoing remark, Judge Sohigian ordered Mr. Ezzell to go across the street to the law library to research the issue and return to court in twenty minutes. Mr. Ezzell left, called his office, and had portions of the cases read to him over the phone. When he returned to court, the following exchange occurred:

THE COURT: Back on the record. Attorneys?

MR. EZZELL: Thank you very much, Your Honor. In the 20 minutes I had an opportunity to have read to me portions of the cases and also –

THE COURT: Would you like more time, Mr. Ezzell? These suggestion [sic] by you that you're in some way being rushed or you just haven't had the time to do something are really either meaningless or provocative or have some affirmative purpose that you intend. They're provocative in the sense that a perfectly obvious issue which all lawyers could have and should have

anticipated is an issue that you lawyers are saying you want time to research on or you don't know the law.

If you want me to give you more time, I will give you more time. I told you to go across the street to the law library. If you didn't do that, if you had someone call you or you called somebody and had someone read something to you, that's obviously not what I ordered or proposed or suggested at all. But if what you're saying is look, Your Honor, notwithstanding your specific orders as to what I was supposed to do to prepare, I didn't do it. Give me a second chance, tell me that now and I'll consider giving you a second chance.

Sooner or later you have to take a legal position without saying, I don't know what the law is or somebody read something to me. In other words, you have to be the attorney for your client and you've got to make whatever legal argument that is legally either proper – I hope it's proper. Certainly in your client's interest. I think we should dispense with the, I don't know what I'm talking about.

MR. EZZELL: I'm sorry, Your Honor. I had not had an opportunity to finish. I was about to say that I understand the two cases I believe and am able to speak on them

Later in the hearing, Judge Sohigian decided to stay the trial pending resolution of the bankruptcy stay, and remarked:

THE COURT: I'm going to prepare a written order that will say substantially those things. The written order will be the order. I'll need some help from you in formulating it if you care to give it. Due to behaviors that have occurred in the past if the situation is you would rather not be of assistance and/or you just don't know the answers to these questions, I'll do the necessary work on that myself.

Judge Sohigian's comments during this hearing were inconsistent with the duty of judges to be patient, dignified and courteous to lawyers with whom the judge deals in an official capacity. Sarcastic, demeaning or belittling comments toward a litigant or counsel are not consistent with the conduct required by Canon 3B(4) of the California Code of Judicial Ethics. (See, e.g., *Kennick v. Commission*

on Judicial Performance (1990) 50 Cal.3d 297, 323-327.) Judge Sohigian's conduct at the April 17, 2006 hearing was, at a minimum, improper action.

In determining that a public admonishment was appropriate in this matter, the commission has also considered that Judge Sohigian has been the subject of prior discipline. In 1991, Judge Sohigian received an advisory letter for abusing his authority in sanctioning attorneys. In that matter, Judge Sohigian sanctioned attorneys for exceeding the page limit on briefs submitted to the court and ordered the attorneys to display his order to all other judges before whom the attorneys might seek to file briefs exceeding the page limit in the future, an unauthorized action and clear abuse of the sanction power.

Commission members Hon. Frederick P. Horn, Mr. Michael A. Kahn, Hon. Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, and Ms. Barbara Schraeger voted for a public admonishment. Commission members Hon. Katherine Feinstein and Mr. Lawrence Simi voted against public admonishment, and would have imposed private discipline. Mr. Marshall Grossman was recused. Two public member positions were vacant.

Dated: April 26, 2007

/s/

Honorable Frederick P. Horn
Chairperson